



REPORT/RECOMMENDATION

To: MAYOR AND COUNCIL	Agenda Item <u>Item No. VIII.C</u>
From: Solvei Wilmot Environmental Health Specialist/Recycling Coordinator	<input checked="checked" type="checkbox"/> Action <input type="checkbox"/> Discussion
Date: May 15, 2012	<input type="checkbox"/> Information
Subject: Authorize Residential Curbside Recycling Contract Negotiations	

ACTION REQUESTED:

Authorize staff to enter into contract negotiations with the "best value" proposal for Residential Curbside Recycling services.

INFORMATION/BACKGROUND:

The current Residential Curbside Recycling services contract expires December 31, 2012.

The Edina City Council met with the Energy and Environment Commission (EEC) at the February 21, 2012 work session and approved the "best value" review process and percentage weighting for evaluating residential curbside recycling proposals. The "best value" review includes evaluation of 1) Environment 40%, 2) Economics 40%, 3) Education 15% and 4) Qualifications 5%.

Council supported EEC recommendation to hire a consultant to aid in the development and analysis of the Request for Proposal (RFP). Dan Krivit, Senior Project Manager, Foth Infrastructure and Environment, LLC was contracted to provide these services.

The RFP for Residential Curbside Recycling Service was presented to the City Council on March 20, 2012 and was approved by Council for release. The RFP included questions developed by the EEC and the Recycling and Solid Waste Work Group to determine "best value" for Environment, Economics, Education and Qualifications.

Four companies submitted Residential Curbside Recycling proposals: 1) Allied Waste Systems, 2) Randy's Environmental Services, 3) Tennis Sanitation and 4) Waste

Management. None of the proposals were for dual-sort collection and therefore only single-stream collection is being considered.

The Environment, Education and Qualifications portion of the proposals were reviewed by a Review Committee consisting of Sherry Engelman, Community Health Administrator, Lt. Mike Nibbe, Police and Solvei Wilmot, Environmental Health Specialist and Recycling Coordinator. Consultant Dan Krivit completed the Economic analysis and incorporated Environment, Education and Qualifications reviews to develop "best value" ranking and overall summary.

Consultant Dan Krivit will be present.

The City Attorney has reviewed the summary and the Draft Single Stream Recycling Collection Agreement.

ATTACHMENTS: (pdf format)

Draft Minutes from Recycling and Solid Waste Work Group, May 3, 2012

Draft Minutes excerpt from Energy and Environment Commission, May 10, 2012

Draft Single Stream Recycling Collection Agreement

**Minutes for the Recycling & Solid Waste Working Group (RSW WG)
of Edina's Energy and Environment Commission**

Thursday, May. 3, 2012

Time 7:15 P.M. Location: City Hall, Community Room, 2nd floor

The meeting was called to order at 7:20 by Chair Latham. Present in addition to Chair Latham were Tim Rudnicki, Michelle Horan, Melissa Seeley and Sarah Zarrin. Staff present included Solvei Wilmot and Michael Nibbe. One member of the public was present, Ms Mandy Mensen of Allied Waste Services.

The focus of the meeting was to review the Foth consultant report summary by Dan Krivit of the City of Edina staff team's review of the 2012 residential recycling proposals. The staff team consisted of Solvei Wilmot, Michael Nibbe and Sherry Engelman. Chair Latham complimented the staff team for their ability to turn around a review of the four proposals in such a constrained time line. Solvei Wilmot expressed appreciation for the work the RSW WG did in providing input during the preparation of the RFP.

Chair Latham inquired if any of the proposers had been formally made aware of the May 3 RSW WG meeting. Solvei Wilmot indicated that only Allied and Tennis had inquired about the date of the meeting and were thus informed.

The RSW WG members were concerned that at 7 years, the length of the contract exceeded the typical 5 year technology lifespan, but acknowledged that the 7 year contract yields the best price at a possible cost of not obtaining technological advances at the earliest opportunity.

It was noted that the grand total of points of the top two proposals were extremely close – 86 for proposer D and 84 for proposer C. As a consequence, multiple RSW WG members had concerns as to what metric was used to calculate the number of points awarded for the 3 point subtotals of the Environment (40 points), Education (15 points) and Qualifications (5 points). The Economic subtotal (40 points) was quantifiable based on price and revenue credits returned to the city. The other three evaluation criteria are more subjective.

Solvei Wilmot responded that similar to the 2008 RFP evaluation process, the categories defined under each criteria were taken as a whole and a total number of points subjectively awarded. As in 2008, there was no defined metric to award a subset number of points to each category. There were 9 such categories defined in the 2012 RFP for the Environment criteria, with 3 categories defined in the 2012 RFP for the Education criteria and 7 categories defined in the 2012 RFP for the Qualifications criteria. These categories were similar to those in the 2008 RFP.

Had there been a metric for each category it would have been transparent as to how the points were arrived at for the more subjective criteria. Tim Rudnicki articulated that we need better data from the RFP responders to make a fully informed evaluation and assignment of points especially for the environmental criteria. Members expressed dissatisfaction that the consultant had not supplied a metric. Chair Latham acknowledged that the consultant had not been specifically asked to do so. It was recommended that a metric be part of the next RFP and that Hennepin County Environmental Services be approached about providing input to such a metric. Chair Latham acknowledged that because the 2012 RFP process had only 6 months compared to the 18 month 2008 RFP process, that a suitable metric had not been developed.

Because the top two 2012 RFP proposers' totals were so close and because a metric was lacking, it was recommended that further information be gathered as follows:

1. Tim Rudnicki recommended that the top two proposers be required to document how much energy is used to handle one ton of material at each step of the process. This would give a metric for an overall indication of the vendor with the most efficient operation. This would address the GHG emission reduction issue. All RSW WG members agreed that this recommendation would be wise. To accomplish this, Tim Rudnicki indicated that the following information would be needed from each of the top two proposers:
 - a.) What energy sources (e.g., gasoline, electricity, natural gas, diesel, biodiesel, other fuels, etc.) does the proposer use at each stage of the collection, transfer and processing of their recycling enterprise?
 - b.) How much energy is used to handle one ton of material in each step of the process? The top two proposers would be expected to include, but not limited to, fuel used to collect and/or transfer one ton of material; electricity in the processing stage to handle one ton of material (this is the energy needed to run

conveyor belts, fans, blowers, climate control, etc); and energy (e.g., diesel, natural gas) to operate transfer equipment like loaders, etc.

2. Sarah Zarrin recommended that the top two proposers be required to document the fuel efficiency of their fleet. All RSW WG members agreed that this would be wise.
3. Chair Latham recommended that the City Council take advantage of their option to tour the facilities of the top two proposers. The only individuals that had toured all 4 proposers' facilities were Solvei Wilmot and Chair Latham. Of the staff review team, Sherry Engelman toured only the Allied facility and Michael Nibble toured only the Allied and Buckingham facilities. In the future, all on the staff review team should be required to tour all proposer's facilities. All RSW WG members agreed that this recommendation would be wise.

There will be no regularly scheduled June 7 RSW WG meeting. Instead, Solvei Wilmot will schedule a June tour for some time after June 14 for the Sioux composting site in Shakopee. The meeting was adjourned at 8:30 pm.

Respectfully submitted,
Dianne Plunkett Latham
Chair Recycling & Solid Waste Working Group

**DRAFT MINUTES
CITY OF EDINA MINNESOTA
ENERGY & ENVIRONMENT COMMISSION
EDINA CITY HALL COMMUNITY ROOM
Thurs., May 10, 2012
7:14 PM**

I. CALL TO ORDER 7:14p.m.

II. ROLL CALL Answering Roll Call was Members Gubrud, Heer, Jennings, Kostuch, Latham, Rudnicki, Thompson, Zarrin and Chair Sierks

Absent: Gupta, Paterlini, and Risser

Absent: Staff Liaison, Karen Kurt

Staff Present: Rebecca Foster and Solvei Wilmot

III. APPROVAL OF MEETING AGENDA

Motion made by Member Gubrud and seconded by Member Kostuch to approve the Agenda as written.

Motion carried unanimously.

IV. ADOPTION OF CONSENT AGENDA

Change the July 4th Parade minutes to, Hoping to have a Tolby mascot.

Motion made by Member Latham and seconded by Member Thompson to approve the Consent Agenda per the edits discussed for the April EEC Minutes. Motion carried unanimously.

V. COMMUNITY COMMENT

Darrell Hoekstra, Waste Management

John O'Neal, Allied Waste

VI. REPORTS AND RECOMMENDATIONS

A. Board and Commission survey results. Joel Stegner presented the survey results to the Commissioners.

B. Recycling & Solid Waste WG

1. Residential Recycling RFP.

Discussion was held regarding the lack of an environmental matrix to produce a more substantive evaluation for the weighing of the proposals. Concern was expressed about seeking additional weighing information from the proposers after the proposals had been opened.

Motion made by Member Latham and seconded by Member Kostuch to

1. Negotiate with the top two proposers.

2. The following metrics should be used in scoring the environmental criterion:

- a. What energy sources (e.g., gasoline, electricity, natural gas, diesel, biodiesel, other fuels, etc.) does the proposer use at each stage of the collection, transfer and processing of their recycling enterprise?
 - b. The top two proposers should be required to document the fuel efficiency of their fleet.
3. City Council members should tour top two proposer's facilities.
4. The top two proposers should submit a 5yr bid in addition to their 7yr bid.

Discussion was held regarding the best value ranking resulted in the best environmental scorer does not offer the best economic package. Members expressed concern that a more quantities matrix should be developed to evaluate the environmental category. Members expressed concern about reevaluating the proposals since they have already been evaluated and a ranking has been established.

Members expressed concern about the seven year length of the contract and why a shorter time wasn't offered. Ms. Wilmot commented that the proposals had been reviewed and the best value proposal was the seven year length. Members discussed a five year contract but recognized the shorter contract may increase the cost of the contract.

Commissioner Rudnicki recommended matrix 2a above. Commissioner Zarrin recommended matrix 2b above. Commissioner Latham recommended that the City Council members tour the Material Recycling Facility (MRF) of both the top two proposers given that with two top proposers there is at least a 50% chance that the contract will change vendors. General concern was expressed with the fact that there were no commissioners on the Recycling RFP review team. This is a continuing EEC concern given that there were no commissioners on the solar panel RFP review team.

Motion carried unanimously.

Motion made by Commissioner Rudnicki, seconded by Commissioner Thompson

- a.) The above metric should also include how much energy is used to handle one ton of material in each step of the process. The top two proposers would be expected to include, but not limited to, fuel used to collect and/or transfer one ton of material; electricity in the processing stage to handle one ton of material (this is the energy needed to run conveyor belts, fans, blowers, climate control, etc); and energy (e.g., diesel, natural gas) to operate transfer equipment like loaders, etc.

Discussion – Commissioners Heer and Kostuch believed that this metric could only be validated if the proposers also documented the assumptions upon which the data was gathered, and could involve considerable effort to gather. Commissioner Latham was concerned that this could extend the time frame to arrive at a decision. Commissioner Rudnicki assured the commission that vendors had routine knowledge of this data in the operation of their plants and that it would not be difficult for proposers to gather. Commissioner Sierks acknowledged that he did not know if this data were difficult to gather or not but believed that it would be worth the effort to try to obtain in order to quantify the environmental criterion of the RFP. Ms. Wilmot expressed concern about how to gather the data.

Roll Call was taken:

Ayes: Gubrud, Rudnicki, Thompson, Zarrin and Chair Sierks

Nayes: Heer, Kostuch, Latham,

Absent: Paterlini and Risser

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(Addition agenda items for the EEC Minutes will be completed at a later date. Only the preceding minutes were compiled in order to be included with the City Council packet on 5/11/12)

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There being no further business on the Commission Agenda, Chair Sierks declared the meeting adjourned at 9:20p.m.

Motion made by Member Latham and seconded by Member Gubrud to adjourn meeting. Motion carried unanimously.

Excerpt Respectfully submitted,

Rebecca Foster
GIS Administrator

SINGLE STREAM RECYCLING COLLECTION AGREEMENT

AGREEMENT dated _____, 2012, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and _____, a _____ (the "Contractor").

RECITALS

A. The Contractor desires to provide single stream recycling collection services to residents of the City of Edina.

B. The City desires to provide these services for the health, safety and welfare of its residents.

**NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS,
THE PARTIES AGREE AS FOLLOWS:**

1. **CONTRACT DOCUMENTS.** The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement.
- B. Addendum ____ to the City of Edina Request for Proposals (RFP) for Residential Curbside Recycling Services dated _____.
- C. Request for Proposals (RFP) for Residential Curbside Recycling Services March 13, 2012.
- D. _____ Proposal for the City of Edina, MN for Residential Curbside Recycling Services.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document "A" having the first priority and Contract Document "D" having the last priority.

2. **OBLIGATIONS OF THE CONTRACTOR.** The Contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

3. DEFINITIONS.

- A. Recyclable Materials: Means all items of refuse designated by _____ to be part of an authorized recycling program and which are intended for transportation, processing, and re-manufacturing or reuse and include the following:
- -
 -
 -
 -
 -
 -
 - Any additions or exclusions as agreed upon by Contractor and City.
- B. Recycling Container: Means a cart in which recyclable materials can be stored and later placed at the curb or alley for collection as specified by the City. Acceptable containers shall be a 65 gallon wheeled cart provided by the Contractor and properly marked for recycling.
- C. Single Stream Recycling Collection Service: Residents will be instructed to commingle all recyclable materials in one container that will be picked up _____ by Contractor. Contractor will pick up all recyclable material placed in and next to recycling containers at Certified Dwelling Units and other City designated collection stops in the City of Edina.
- D. Certified Dwelling Unit (CDU): Means _____.
- E. Contractor: Means person or persons authorized by the City to perform recycling collection services on prescribed routes within collection districts within the City of Edina.
- F. Collection Hours: Means the time period during which collection of recyclable material is authorized in the City.
- G. Missed Collection: Means the failure of the Contractor to provide recycling collection service to a CDU or other City designated collection stop within the recycling district during collection hours on the scheduled collection day.
- H. Holidays: Means any of the following: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.
- I. Scheduled Collection Day: Means the day or days of the week on which recycling collection service by the Contractor is to occur, as specified in the contract with the City. If a holiday occurs on a weekday, the collection for each day of that week after the holiday will be made one (1) working day later.

4. **CONTRACTOR'S COLLECTION REQUIREMENTS.**

A. Residential Curbside Recycling Collection Program.

1. Frequency of Residential Collection: Residential recycling collection shall occur biweekly.
2. Residential Collection Hours: Collection shall commence no earlier than 7:00 a.m. local time and shall be completed by 7:00 p.m. collection day. Residents will be required to have materials placed at the collection point by 7:00 a.m. on the scheduled collection day.
3. Compliance with Laws and Regulations: In providing services hereunder, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided hereunder. Any violation shall constitute a material breach of this Agreement. This contract shall be controlled by the laws of the State of Minnesota, and ordinances of the City of Edina.
4. Weighing of Loads and Reporting Requirements: The Contractor will keep accurate records consisting of an approved weight slip with the date, time, collection route, driver's identification, vehicle number, rate and gross weight, net weight and number of route stops for each loaded vehicle. A detailed monthly report shall be provided to the City that identifies total tonnage activity by commodity. This report should include all curbside and municipal recycling activity.
5. Recycle Cart Purchase and Delivery: The Contractor agrees to, at its expense, purchase, deliver, service and repair, and maintain sufficient cart inventory to meet supply and demand needs for the City of Edina Recycling CDU's, estimated to be _____ in number. The Contractor shall initially deliver one 65-gallon cart to each CDU and have a sufficient inventory of 30-gallon and 90-gallon carts available for delivery and switch-out with the 65-gallon carts per resident/customer request. The standard 65-gallon cart shall be approximately _____ in dimension, and be smooth for ease in cleaning. The cart shall be green with a yellow lid and be uniform and consistent in color and design with a recycling symbol on two sides and front and approved instruction label imbedded into each lid, so as to be easily identified by the resident/customer and the Contractor driver as the container for recyclable materials.
6. Recycling Cart Maintenance/Replacement: The driver is required to report to the Contractor the location of any cart that is damaged. The Contractor is required to notify the Recycling Coordinator by fax/email of any driver report of cart damage. The Recycling Coordinator will notify the Contractor by fax/email of any cart damage or request for change of cart size that is reported/requested to them by customers/residents. Any damaged cart or cart request will be repaired or replaced by the Contractor within two (2) week of the report.

7. Point of Collection: Most residential recycling collection will occur at the same location from where the regular refuse is collected, generally the alleys where they exist and street curbside in other areas. Carts shall be placed with the handle toward the house and lid opening toward the street or alley. The driver is required to place the emptied cart back/down in the same location as set by resident.

Recycling carts/containers for municipal recycling collection shall be placed at agreed upon specific locations as determined by the City. All carts/containers shall be returned to the specific location after completion of collection.

8. Ownership of Recyclable Materials: All recyclable materials for collection shall remain the responsibility and in the ownership of the occupant of the resident or municipal location until handled for collection by the Contractor. At the point of collection the recyclable materials become the property of the Contractor. Any person or persons taking recyclable materials from a curbside container without explicit permission of the resident or municipality will be in violation of local ordinance and subject to penalty. The Contractor shall report to the Recycling Coordinator any instances of suspected scavenging or unauthorized removal of recyclable materials from any collection container.
9. Route Management and Customer Service: The Contractor shall, at all times, provide the City's Recycling Coordinator with a lead route/driver supervisor who is accessible to the Contractor dispatch department via two way communications and to the Recycling Coordinator to handle route and collection issues in a timely fashion. The Contractor shall have on duty Monday through Friday from 8:00 a.m. to 4:30 p.m. a dispatch customer service representative to receive customer calls and route issues. The Contractor shall provide a 24 hour answering service line or device to receive customer calls. The Route Supervisor and all collection vehicles must be equipped with 2-way communication devices.
10. Procedure for Unacceptable Materials, Materials Outside Cart and Unreachable Carts: If the Contractor determines that a resident has set out unacceptable recyclable materials, left recyclable materials outside of the cart, or has positioned the cart so that it is unreachable with the mechanical arm, the Contractor shall use the following procedures:
 - a. The Contractor shall collect all the recyclable materials and leave an "education tag" provided by the Contractor attached to the handle of the recycling container indicating acceptable materials, the proper method of preparation and the proper placement of the cart.
 - b. The driver shall record the address and report the addresses to the Contractor dispatcher, who will notify the City's Recycling Coordinator of the addresses no later than noon the following day.

11. Procedure for Complaints-Questions-Missed Collections. A complaint of service or missed collection is a complaint received by the Contractor from either the customer or the Administration Office. If the report is for a missed stop and is received by the Contractor before 1:00 p.m. on a scheduled working day, the Contractor is required to return to the complaint address and complete the collection. If the report is registered after 1:00 p.m. on a scheduled working day, the Contractor is required to return to the complaint address by 12:00 noon the following working day.
12. Clean up Responsibilities: The Contractor shall adequately clean up any recyclable material spilled or blown during the course of collection and/or hauling operations. All collection vehicles shall be equipped with at least one broom and one shovel for use in cleaning up material spillage. The Contractor shall have no responsibility to remove or clean up any items, which are not recyclable materials.
13. Non-Completion of Collection and Extension of Collection Hours: The Contractor shall inform the City of the areas not completed, the reason for non-completion, and the expected time of completion.
14. Collection Vehicle Equipment Requirements: Each collection vehicle shall be equipped with the following:
 - a. A two way communication system.
 - b. A first aid kit.
 - c. An approved 2A10BC dry chemical fire extinguisher.
 - d. Warning flashers.
 - e. Overhead strobe light.
 - f. "Reverse" audio warning alarm to indicate movement in reverse.
 - g. Signs on the rear of the vehicle which state "This Vehicle Makes Frequent Stops."
 - h. A rear mounted video camera and cab monitor/screen to view operations occurring at the rear of the vehicle.
 - i. Hazard flares and cones.
 - j. A broom and a shovel for cleaning up spills.
 - k. "Absorb" pillows or dry product adequate to absorb/contain any oil/liquid spill from collection vehicle.

All required equipment must be in proper working order at all times. All vehicles must be maintained in proper working order and be clean and free from odor as much as possible. All collection vehicles shall be uniformly painted and the paint shall be in good condition. The Contractor's name shall be clearly visible from all sides of the vehicle, along with the Contractor's phone number, the Recycling symbol, and the vehicle ID number.

15. Driver Duties and Responsibilities: The Contractor shall be responsible for ensuring that there is sufficient personnel and equipment to fulfill the requirements and specifications of this contract proposal, and that all personnel

are trained both in program operations and in customer service and insure that all personnel maintain a positive attitude with the public and in the work place and shall:

- a. Conduct themselves at all times in a courteous manner and use no abusive or foul language.
 - b. Be clean and presentable in appearance, as so far as possible.
 - c. Wear a uniform and employee identification badge or name tag.
 - d. Drive in a safe and considerate manner.
 - e. Manage carts in a careful manner, setting them back in place so as to avoid spillage and littering or damage to container.
 - f. Perform their work in a neat and quiet manner, monitor for any spillage and be responsible for cleaning up any litter or breakage spilled in collection and hauling operations.
 - g. Record all addresses that could not be collected and reasons, turn list into dispatch at end of each collection day and copies sent to Recycling Coordinator.
 - h. Attach an education tab to the container identifying problems and how to resolve them.
 - i. Collect and transport recyclable materials according to all existing laws and ordinances, and future amendments thereto, of the State of Minnesota and local governing bodies.
 - j. Report all damage to property.
16. Holidays: The Contractor will observe all holidays on which no recycling collection service will be performed. When a holiday occurs on a scheduled collection day, the collection for each day of that week after the holiday shall be made one (1) working day later.
17. Contract Length: This contract shall commence _____ and shall be for _____ years ending _____.
18. Rate: \$_____ per month per CDU.
19. Rate Adjustments: The rate shall be adjusted as follows _____.
20. Default. Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this Agreement:
- a. If either party fails to observe or perform its obligations under this Agreement and does not cure such failure within ten (10) days from its receipt of written notice of breach without, however, limiting any other rights available to parties pursuant to any other provisions of this Agreement.
 - b. Except as expressly limited hereby, City and Contractor shall have such remedies for the default of the other party hereto as may be provided at

law or equity following written notice of such default and failure to cure the same within ten (10) days.

21. Termination. Except as otherwise provided herein, this Agreement may be terminated without any penalty or further liability as follows:
 - a. Upon ten (10) days written notice in the event of a default (as defined above);
 - b. Upon ninety (90) days written notice by Contractor, if Contractor is unable to obtain or maintain any license, permit or other governmental approval necessary to the operation of the Contractor's business;
 - c. Upon ninety (90) days written notice by City if it determines that Contractor has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to governmental approvals granted thereunder, after a public hearing before the City's Council.
22. Taxes. Contractor shall pay any taxes, of any nature, due, owing or levied in association with its services pursuant to this Agreement.
23. Insurance.
 - a. The Contractor must maintain the types and amounts of insurance set forth in the
 - b. Adjustment to Insurance Coverage Limits. The coverage limits shall be increased at the time of any rate adjustment by the Consumer Price Index.
 - f. Additional Insured - Certificate of Insurance. The Contractor shall provide, prior to starting services, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A+ or better), licensed to do business in the State of Minnesota, which includes all coverages required in this paragraph. Contractor will name the City as an Additional Insured on the General Liability and Commercial Automobile Liability Policies. The Certificate(s) shall also provide the coverage may not be cancelled, non-renewed, or materially changed without thirty (30) days prior written notice to the City.
24. Indemnification. Contractor agrees to defend, indemnify and hold harmless City and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by City or for which City may be liable in the performance of this Agreement, except those which arise solely from the negligence, willful misconduct, or other fault of

City. Contractor shall defend the City against all claims arising out of the performance of this Agreement.

25. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to City, to: City of Edina
 4801 W. 40th Street
 Edina, Minnesota, 55424
 Attention: _____

If to Contractor, to: _____

26. Assignment. This Agreement, or rights thereunder, may not be sold, assigned, or transferred at any time by Contractor without the written consent of the City.
27. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
28. Miscellaneous.
- a. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
 - b. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. These are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.
 - c. This Agreement shall be construed in accordance with the laws of the State of Minnesota.
 - d. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall remain in full force and effect.

**CITY:
CITY OF EDINA**

CONTRACTOR:

BY: _____
James Hovland, Mayor

BY: _____

Its: _____

AND _____
Scott Neal, City Manager